

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

NORTHEAST CONTROLS, INC.	:	CIVIL ACTION – LAW
and	:	
ST. PAUL MERCURY INSURANCE COMPANY	:	
	:	
	:	
v.	:	
	:	
	:	
FISHER CONTROLS INTERNATIONAL, LLC	:	NO. 1:06-CV-00412 (SLR)

**APPENDIX C  
TO  
REPLY BRIEF OF PLAINTIFFS NORTHEAST CONTROLS, INC. AND ST. PAUL  
MERCURY INSURANCE COMPANY IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

THOMAS P. WAGNER, ESQUIRE  
MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN  
1845 Walnut Street  
Philadelphia, PA 19103  
tel: 215-575-4562  
*Counsel for Plaintiffs*

JOSEPH SCOTT SHANNON, ESQUIRE  
Delaware Bar I.D. No. 3434  
MARSHALL DENNEHEY WARNER  
COLEMAN & GOGGIN  
1220 North Market Street, 5<sup>th</sup> Floor  
P.O. Box 8888  
Wilmington, DE 19899 – 8888  
tel.: 302.552.4329  
e-mail: jsshannon@mdwcg.com  
*Counsel for Plaintiffs*

Dated: November 28, 2007

**TABLE OF CONTENTS**

<b><u>Document</u></b>	<b><u>Exhibit</u></b>
Selected Pages of Deposition Transcript of David. P. Pope, Ph.D. [C0001-0003].....	1
Selected Pages of Deposition Transcript of Robert A. Mostello, P.E. [C0004-0006].....	2
Selected Pages of Deposition Transcript of Robert A. Mostello, P.E. [C0007-0012].....	3

# EXHIBIT 1



**In the Matter Of:**

**Northeast Controls Inc. and St. Paul  
Mercury Insurance**

**V.**

**Fisher Controls International, LLC**

**C.A. # 06-412**

---

**Transcript of:**

**David P. Pope, Ph.D.**

**October 17, 2007**

---

Wilcox and Fetzer, Ltd.  
Phone: 302-655-0477  
Fax: 302-655-0497  
Email: [depos@wilfet.com](mailto:depos@wilfet.com)  
Internet: [www.wilfet.com](http://www.wilfet.com)

Northeast Controls Inc. and St. Paul Mercury Insurance v. Fisher Controls International, LLC  
David P. Pope, Ph.D.

<p>54</p> <p>1 Did you read Mr. Bhakoo's deposition</p> <p>2 transcripts in the underlying litigation?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall that in those transcripts he</p> <p>5 stated that he was asked to examine and he stated that</p> <p>6 Inconel 718 would not have been an approved material</p> <p>7 for this application?</p> <p>8 Do you recall reading that?</p> <p>9 A. That's probably what I'm referring to there. I</p> <p>10 just don't recall.</p> <p>11 Q. Let's look at Exhibit 27 briefly and I would</p> <p>12 like to turn your attention to page 5 of that which is</p> <p>13 Exhibit A.</p> <p>14 MR. WAGNER: What's 27?</p> <p>15 MR. GUNTER: Exhibit 27 is the notice of</p> <p>16 deposition.</p> <p>17 MR. WAGNER: Oh, okay. Thank you.</p> <p>18 BY MR. GUNTER:</p> <p>19 Q. Let's go down through here.</p> <p>20 We have with us by virtue of your 8-30-07</p> <p>21 report your curriculum vitae in this matter, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And your working file in this particular matter</p> <p>24 is Exhibit 28, correct?</p>	<p>56</p> <p>1 included there (indicating).</p> <p>2 Q. This time let's look at point 8 on that: "Any</p> <p>3 exhibits or demonstrative aids you plan to rely on at</p> <p>4 the trial in this matter."</p> <p>5 Have you prepared any such exhibits or</p> <p>6 demonstrative aids?</p> <p>7 A. No.</p> <p>8 Q. Have you identified any for use?</p> <p>9 A. No.</p> <p>10 MR. WAGNER: I would add only, Counsel, as</p> <p>11 I mentioned before, we certainly do plan to use</p> <p>12 Dr. Pope's photographs which are here. We haven't had</p> <p>13 any of them enlarged yet. It's not anywhere close</p> <p>14 enough to trial to do that. We do anticipate doing</p> <p>15 that, however and you have got all the photographs</p> <p>16 here to my knowledge.</p> <p>17 MR. GUNTER: Okay. What I would like to</p> <p>18 do now is go through the file a little bit more and</p> <p>19 make copies of a few things and then ask Dr. Pope a</p> <p>20 few questions. I appreciate his direct and</p> <p>21 straightforward answers to my questions this morning</p> <p>22 and because of that, I think we might be able to</p> <p>23 release you to the general population pretty quickly</p> <p>24 here.</p>
<p>55</p> <p>1 A. Yes.</p> <p>2 Q. And does that include your billing statements</p> <p>3 reflecting all work done by you in this, in preparing</p> <p>4 your expert report and formulating your opinion in</p> <p>5 this case?</p> <p>6 A. Yes.</p> <p>7 Q. I take it this doesn't include billing</p> <p>8 statements from the underlying action?</p> <p>9 A. Well, it's all in one file, so I was too lazy</p> <p>10 to separate them out.</p> <p>11 Q. Very good.</p> <p>12 Point 4, quote, "Each and every document</p> <p>13 reviewed by you or utilized by you in preparing your</p> <p>14 expert report or in formulating your opinion in this</p> <p>15 case," close quote. I take it this does not include</p> <p>16 all of those documents, correct?</p> <p>17 A. Well, it includes all of the documents that I</p> <p>18 have that I referred to.</p> <p>19 Q. And, in addition, to the extent they formed the</p> <p>20 background, the materials at your office from the</p> <p>21 underlying litigation you didn't refer to</p> <p>22 specifically?</p> <p>23 A. That's correct. Anything that I specifically</p> <p>24 referred to in writing these Exhibits 26 and 25 are</p>	<p>57</p> <p>1 We can go off the record.</p> <p>2 (A brief recess was taken.)</p> <p>3 BY MR. GUNTER:</p> <p>4 Q. Dr. Pope, you have identified in your report</p> <p>5 some of the areas in which you disagree at least with</p> <p>6 Dr. Mostello's original report and he then provided a</p> <p>7 rebuttal report.</p> <p>8 Have you formed any opinions regarding</p> <p>9 Dr. Mostello's rebuttal report and are you prepared to</p> <p>10 offer any opinions about his rebuttal report?</p> <p>11 A. Yes.</p> <p>12 Q. Can you identify for me -- and if you need to</p> <p>13 look at it, you can -- what portions of Dr. Mostello's</p> <p>14 rebuttal report that you disagree with?</p> <p>15 A. Dr. Mostello clarified in that rebuttal report</p> <p>16 what he meant by the role of the Inconel 718 and the</p> <p>17 Hastelloy C in the spread of the fire and specifically</p> <p>18 he talked about the heat of combustion that those two</p> <p>19 materials added to the fire that wouldn't have been</p> <p>20 there if the Monel alloy had been used instead of</p> <p>21 those two alloys.</p> <p>22 He correctly points out that there is some</p> <p>23 heat of combustion applied, that came into the fire as</p> <p>24 a result of the inclusion of those two materials. My</p>

Northeast Controls Inc. and St. Paul Mercury Insurance v. Fisher Controls International, LLC  
David P. Pope, Ph.D.

<p style="text-align: right;">58</p> <p>1 disagreement is with the overall implication of what</p> <p>2 he's saying. It is true that there's additional heat</p> <p>3 of combustion supplied by that mechanism, but that</p> <p>4 additional heat is so small as to be inconsequential</p> <p>5 and even unmeasurable.</p> <p>6 Q. What's the basis for your opinion that the</p> <p>7 additional heat of combustion contributed by the</p> <p>8 Hastelloy C disk and the Inconel 718 shaft would be</p> <p>9 inconsequential and even unmeasurable?</p> <p>10 A. The reason is that the steel pipe and flange</p> <p>11 upstream from the valve was consumed to such an extent</p> <p>12 that I estimate something in excess of a hundred</p> <p>13 pounds of iron was consumed in the fire. The iron has</p> <p>14 a very high heat of combustion compared to either of</p> <p>15 the other two alloys, plus the fact that those, the</p> <p>16 quantities of material in those other two components</p> <p>17 is very small so the additional heat of combustion</p> <p>18 supplied is far less than 1 percent of the total heat</p> <p>19 of combustion supplied by the burning of the iron.</p> <p>20 Q. Had the disk been manufactured of Monel and the</p> <p>21 stem been manufactured from Monel, that in your</p> <p>22 opinion would have either melted or burned, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Had those items melted, they would not have</p>	<p style="text-align: right;">60</p> <p>1 MR. GUNTER: Off the record.</p> <p>2 (Discussion off the record.)</p> <p>3 BY MR. GUNTER:</p> <p>4 Q. You identified, Dr. Pope, one area in which you</p> <p>5 disagreed with Dr. Mostello. Are there additional</p> <p>6 areas in Dr. Mostello's rebuttal report, additional</p> <p>7 points in Dr. Mostello's report with which you</p> <p>8 disagree?</p> <p>9 This (indicating) is Dr. Mostello's</p> <p>10 rebuttal report if you need to --</p> <p>11 A. Yes. I have that.</p> <p>12 Q. I think that's it.</p> <p>13 A. I believe that those are the major points with</p> <p>14 which I disagreed or that is the major point with</p> <p>15 which I disagreed.</p> <p>16 Q. Have we covered today the points with which you</p> <p>17 disagreed with Dr. Mostello at this time or are there</p> <p>18 additional points with which you disagree with</p> <p>19 Dr. Mostello that we have not yet covered?</p> <p>20 A. Perhaps I could take a quick look at his most</p> <p>21 recent report to make sure that I haven't missed</p> <p>22 something.</p> <p>23 Q. Certainly.</p> <p>24 MR. WAGNER: And I'm glad for Dr. Pope to</p>
<p style="text-align: right;">59</p> <p>1 contributed anything to the heat of combustion,</p> <p>2 correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And, in fact, as we discussed earlier, they</p> <p>5 would have subtracted some quantity from the heat of</p> <p>6 combustion, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Recognizing that it would be -- well, the</p> <p>9 thrust bearing was specified in the specification</p> <p>10 sheet initialed by Mr. Bhakoo and Mr. Cappellini as</p> <p>11 being a Monel thrust bearing, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Had it simply melted, been present and melted,</p> <p>14 that would have subtracted from the heat of combustion</p> <p>15 as well, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And, similarly, although recognizing that the</p> <p>18 Kel-f seal was small, had there been a Monel/PTFE seal</p> <p>19 in place you would have had a smaller quantity of PTFE</p> <p>20 than Kel-f, correct?</p> <p>21 A. Yes.</p> <p>22 Q. It's just a thin ring of PTFE in the Monel/PTFE</p> <p>23 Phoenix III Fire Safe seat?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">61</p> <p>1 answer your question as best as he can verbally.</p> <p>2 That, however, is not to exclude anything that is</p> <p>3 already disclosed in his reports.</p> <p>4 MR. GUNTER: Certainly.</p> <p>5 A. Oh, yes. There was one other thing.</p> <p>6 He talks about the use of Monel as a fire</p> <p>7 break, implying somehow that if the Monel, if the disk</p> <p>8 had been made out of Monel, that somehow that might</p> <p>9 have prevented the fire from spreading downstream. I</p> <p>10 strongly disagree with that.</p> <p>11 Q. And what's the basis for your disagreement with</p> <p>12 Dr. Mostello on that point?</p> <p>13 A. Again, the main point is that if around 100</p> <p>14 pounds of iron is burning upstream in pure oxygen,</p> <p>15 that is the granddaddy of all oxygen torches and a</p> <p>16 small amount of Monel that is opened, that is to say</p> <p>17 that that disk was partially opened, will make no</p> <p>18 difference in the downstream events.</p> <p>19 Q. Do you know the weight, what the weight of the</p> <p>20 disk would have been had it been manufactured in</p> <p>21 Monel?</p> <p>22 A. No, I don't. But I know that it is relatively</p> <p>23 small compared to the weight of the steel that was</p> <p>24 burned.</p>

16 (Pages 58 to 61)

# EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

- - -  
NORTHEAST : CIVIL ACTION - LAW  
CONTROLS, INC. :  
and ST. PAUL :  
MERCURY INSURANCE :  
COMPANY :  
V. :  
FISHER CONTROLS : NO. 1:06-CV-00412  
INTERNATIONAL, : (SLR)  
LLC :

- - -  
November 2, 2007  
- - -

Oral deposition of ROBERT A.  
MOSTELLO, P.E., held in the offices of  
Marshall, Dennehey, Warner, Coleman &  
Goggin, 1220 North Market Street, Suite 500,  
Wilmington, Delaware 19801, commencing at  
9:58 a.m., on the above date, before Yvonne  
A. Santiago, a Professional Reporter and a  
Notary Public of the State of Delaware.

- - -  
BSR -- BASYE SANTIAGO REPORTING  
One Commerce Center, Suite 903  
1201 North Orange Street  
Wilmington, Delaware 19801  
(302) 573-2300

C0004

BSR -- BASYE SANTIAGO REPORTING

b362462d-4529-4d07-a801-0a8b50cb107b



Robert A. Mostello, P.E.

Page 86

1 the actual case did burn.

2 Q. When you say they may not  
3 have, on the other hand, it still could have  
4 ignited as well, correct?

5 A. It's possible. But,  
6 overwhelming, my feeling is that it would  
7 not have burned. The Hastelloy body would  
8 not have burned had the Monel internals been  
9 in present.

10 Q. Would Mr. Olson's injuries  
11 have been any different?

12 A. I don't really know. I know  
13 the damage would be less. The basic damage  
14 of the valve would be less. Whether -- how  
15 that would affect Mr. Olson's position, one  
16 would think, if you had to make a decision,  
17 worse or better, I would say probably his  
18 position would have been better. But  
19 strictly based on the fact that there would  
20 have been less damage in the first place had  
21 the internals been made of Monel.

22 Q. So scientifically or from an  
23 engineering standpoint, your first answer  
24 was the correct one, you really don't know?

C0005

BSR -- BASYE SANTIAGO REPORTING

b362462d-4529-4d07-a801-0a8b50cb107b

Robert A. Mostello, P.E.

Page 87

1 A. Really don't know.

2 Q. Doctor, tell me this, have you  
3 ever met Mr. Olson?

4 A. No. I have not.

5 Q. Have you read his deposition?

6 A. Yes, way back in 2004.

7 Q. That's when you read it?

8 A. Yes.

9 Q. Have you read it more  
10 recently?

11 A. No. I have not.

12 Q. Is there any reason why you  
13 chose not to read it in connection with your  
14 work in the current litigation?

15 A. I felt it was irrelevant.

16 Q. Why?

17 A. I was only asked to assess, A,  
18 whether the order was processed properly by  
19 Northeast Controls and, secondarily, would  
20 the damage have been different had the valve  
21 materials been as specified by Praxair.

22 Q. Dr. Mostello, if I understood  
23 your reports correctly, it was your opinion  
24 that the fire in this case was ignited when

C0006

BSR -- BASYE SANTIAGO REPORTING

b362462d-4529-4d07-a801-0a8b50cb107b

# EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

- - -  
NORTHEAST : CIVIL ACTION - LAW  
CONTROLS, INC. :  
and ST. PAUL :  
MERCURY INSURANCE :  
COMPANY :  
:  
V. :  
:  
FISHER CONTROLS : NO. 1:06-CV-00412  
INTERNATIONAL, : (SLR)  
LLC :  
- - -

November 2, 2007  
- - -

Oral deposition of ROBERT A.  
MOSTELLO, P.E., held in the offices of  
Marshall, Dennehey, Warner, Coleman &  
Goggin, 1220 North Market Street, Suite 500,  
Wilmington, Delaware 19801, commencing at  
9:58 a.m., on the above date, before Yvonne  
A. Santiago, a Professional Reporter and a  
Notary Public of the State of Delaware.  
- - -

BSR -- BASYE SANTIAGO REPORTING  
One Commerce Center, Suite 903  
1201 North Orange Street  
Wilmington, Delaware 19801  
(302) 573-2300

C0007

BSR -- BASYE SANTIAGO REPORTING

b362462d-4529-4d07-a801-0a8b50cb107b

Robert A. Mostello, P.E.

Page 119

1 MR. WAGNER: Let's go off the  
2 record one second.

3 - - -

4 (An off-the-record discussion  
5 was held.)

6 - - -

7 BY MR. WAGNER:

8 Q. Dr. Mostello, we're back on  
9 the record.

10 You testified earlier that if  
11 the trim parts we were talking about had  
12 been made of Monel, you believe the valve  
13 itself may not have burned in the way that  
14 it did, although you testified that it would  
15 have been deformed; am I correct, is that  
16 the word you used?

17 A. Well, I think my words were,  
18 the valve body itself may not have burned if  
19 the internals were made of Monel. I believe  
20 the internals would have been deformed. I'm  
21 not sure about the body.

22 Q. Even if they were made of  
23 Monel, you're saying they would have been  
24 deformed?

C0008

Robert A. Mostello, P.E.

Page 120

1           A.       Oh, yeah. They would have.  
2       It's a soft material.

3           Q.       Would they have been deformed  
4       to the extent that the valve would no longer  
5       have been usable as a valve?

6           A.       Most likely.

7           Q.       And what about the adjoining  
8       Monel pipe, would that still have melted to  
9       a greater or lesser degree?

10          A.       I don't know because the Monel  
11       components in the valve would have absorbed  
12       some of the heat coming down from upstream.  
13       Whether that gas would have been cooler when  
14       it reached the Monel pipe, if it were  
15       cooler, it would possibly not have melted  
16       then. The pipe would not have melted having  
17       had upstream some absorption of heat and  
18       nothing added to the heat by any combustion.

19          Q.       The answer is, you don't know?

20          A.       Directionally -- I don't know  
21       precisely. Directionally, I would say, as I  
22       have said in my report, that it would be  
23       absorption of heat by Monel internals and no  
24       contribution from those internals to the

C0009

BSR -- BASYE SANTIAGO REPORTING

b362462d-4529-4d07-a801-0a8b50cb107b

Robert A. Mostello, P.E.

Page 121

1 heat.

2 Q. And what I'm trying to  
3 understand is, do you have an opinion about  
4 the extent of difference that we would see,  
5 if any, in the damage to the adjoining Monel  
6 pipe or don't you know?

7 A. Well, I would go back then to  
8 my estimate of the heat added by the  
9 components in the actual fire as being  
10 anywhere from 10 to 50 percent of the heat  
11 which came from the carbon steel flange.  
12 So, therefore, there would be a significant  
13 difference in heat going downstream from  
14 that valve.

15 Q. Would some part the Monel pipe  
16 still have melted or don't you know?

17 A. I would suspect it would not  
18 have melted because less heat would be  
19 reaching it.

20 Q. Well, have you done something  
21 to calculate whether or not it would have  
22 melted?

23 A. No.

24 Q. Would there be a way to do

C0010

BSR -- BASYE SANTIAGO REPORTING

b362462d-4529-4d07-a801-0a8b50cb107b

Robert A. Mostello, P.E.

Page 123

1       internals and to the body of the valve from  
2       the hot gas and then what the residual heat  
3       would be leaving the valve.

4               Q.       How would you go about making  
5       that estimate if you wanted to do so?

6               A.       In just that way. I would --  
7       what the difficult part is, is that the  
8       effect of any openings or breaches upstream  
9       of the valve allowing hot gas to escape  
10       upstream of the valve is a big unknown how  
11       to quantify that as well as radiation of  
12       heat from the carbon steel pipe and from the  
13       outside of the Hastelloy body, which gets  
14       hot. So there are a lot of -- there's an  
15       awful big range of -- in trying to do a  
16       calculation like that.

17              Q.       And there would have been such  
18       openings upstream of the valve regardless of  
19       what the internals of the valve were made  
20       of?

21              A.       Yes, as we saw from the carbon  
22       steel flange.

23              Q.       All right. I'd like you to go  
24       now please to your report of September 4 of



Robert A. Mostello, P.E.

Page 122

1 that?

2 A. There might be.

3 Q. Do you know if there is?

4 A. There are ways of estimating.  
5 This is very difficult to model this  
6 situation quantitatively, but there are ways  
7 of estimating that.

8 Q. In any event, you have not  
9 done that as we sit here now, correct?

10 A. As we sit here now I have not  
11 done that.

12 Q. Doctor, do you know what the  
13 cost of that Monel piping that we're talking  
14 about here was, the part that was damaged?

15 A. I don't. I would estimate of  
16 the order of \$10,000.

17 Q. By the way, you said there  
18 would be ways of estimating that difference  
19 that we just spoke of. What ways would they  
20 be?

21 A. One would have to estimate how  
22 much of the hot gas actually left due to  
23 burning the carbon steel flange before the  
24 valve, the likely heat transfer to the Monel

C0012

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

NORTHEAST CONTROLS, Inc.; and	)	
ST. PAUL MERCURY INSURANCE Co.,	)	
	)	
Plaintiffs,	)	Civ. A. No. 06-412-SLR
	)	
v.	)	
	)	
FISHER CONTROLS INTERNATIONAL, LLC,	)	
	)	
Defendant.	)	

**CERTIFICATE OF SERVICE**

TO: RIDDELL WILLIAMS Patrick McVey, Esquire Daniel J. Gunter, Esquire 1001 Fourth Avenue Plaza, Ste. 4500 Seattle, WA 98154	MARON MARVEL BRADLEY & ANDERSON, P.A. Paul A. Bradley, Esquire 1201 North Market Street, Ste. 900 Wilmington, DE 19801
---	--

PLEASE TAKE NOTICE: On November 28, 2007, Northeast Controls, Inc. served the attached *Appendix C to Reply Brief of Plaintiffs Northeast Controls, Inc. and St. Paul Mercury Insurance Company in Support of Motion for Summary Judgment* upon defendant Fisher Controls, Inc. via e-filing and First Class U.S. Mail, postage prepaid, to the above-named persons.

**MARSHALL DENNEHEY WARNER  
COLEMAN & GOGGIN**

/s/Thomas P. Wagner  
Thomas P. Wagner, Esquire (*pro hac vice*)  
1845 Walnut Street, 21<sup>st</sup> Floor  
Philadelphia, PA 19103  
tel.: 215.575.4562  
e-mail: [tpwagner@mdwcg.com](mailto:tpwagner@mdwcg.com)  
*Of Counsel for Plaintiffs*

**MARSHALL DENNEHEY WARNER  
COLEMAN & GOGGIN**

/s/Joseph Scott Shannon  
Joseph Scott Shannon, Esquire (I.D. 3434)  
1220 North Market Street, 5<sup>th</sup> Floor  
P.O. Box 8888  
Wilmington, DE 19899 – 8888  
tel.: 302.552.4329  
e-mail: [jsshannon@mdwcg.com](mailto:jsshannon@mdwcg.com)  
*Counsel for Plaintiffs*

Dated: November 28, 2007